

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Oliver Goldman	Art Unit : 2137
Patent No. : 7,370,206	Examiner : Techane Gergiso
Issue Date : May 6, 2008	Conf. No. : 7963
Serial No. : 10/656,593	
Filed : September 4, 2003	
Title : SELF-SIGNING ELECTRONIC DOCUMENTS	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)**

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed April 16, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 610 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 610 days to 1127 days, and to increase Total PTA from 610 to 1127 days, is respectfully requested.

**REVIEW OF PATENT TERM ADJUSTMENT CALCULATION**

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) The PTO mailed a delayed 14-month first non-final Office Action on April 5, 2006, thereby according a PTO Delay of 517 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 2) The application was filed on September 4, 2003 and the patent issued on May 6, 2008, more than three years later. Only 93 days of PTO delay were calculated for issuance of the patent after three years from filing. Applicant respectfully submits that the PTO's calculation of this PTO "B Delay" contains an error and that the

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I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: November 7, 2008

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correct PTO Delay for issuance beyond three years from filing is 610 days, as outlined further below.

### REMARKS

Applicant has calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can “overlap” is if they occur on the same day, and if an “A delay” occurs on one calendar day and a “B delay” occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. “A Delays” are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies “if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years,” and that “B delay” begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of “A Delay” or “B Delay,” rather than the combined sum of “A Delay” and “B Delay” (which does not include any days after three years from filing where “A” and “B” delays overlap).

In this patent, “A Delay” should be calculated as 517 days and “B Delay” should be calculated as 610 days. Thus, the total PTO Delay should be calculated as 1127 days.

In consideration of the events described above, Applicant believes the PTA calculation of 610 days is incorrect. As such, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner:

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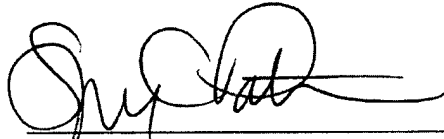
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- 1) Total PTO Delay should be calculated as 1127 days;
- 2) Total Applicant Delay should be calculated as 0 days; and
- 3) Total PTA should be calculated as 1127 days.

Applicant notes that this patent is not subject to a terminal disclaimer.

The Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,



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